

These further instructions to the jury were especially called for, inasmuch as Lowry was indicted and convicted at the same sittings of the Court for criminal negligence in respect of the death of Coop. It was necessary to guard the minds of the jurors against associating the right of the plaintiff to recover with the guilt of Lowry.

It must have been common knowledge among the jurors summoned for the sittings at which this action was tried, and at which Lowry was also tried and convicted, that he had been so tried and convicted, whether any of the jurors who tried the criminal case also tried the civil case or not; and, notwithstanding the very careful charge of the learned trial Judge, and with great respect, the trial in its essential features was unsatisfactory, and there ought to be a new trial.

Costs of the former trial and of this appeal to be costs in the cause.

MULOCK, C.J. Ex., and SUTHERLAND and KELLY, JJ., agreed with CLUTE, J.—MULOCK, C.J. Ex., and KELLY, J., giving written reasons.

RIDDELL, J., read a dissenting judgment.

New trial ordered; RIDDELL, J., dissenting.

SECOND DIVISIONAL COURT.

MARCH 25TH, 1918.

*STRUTHERS v. CHAMANDY.

Assignments and Preferences—Assignment for Benefit of Creditors—Previous Transfer of Building and Lease to Creditor—Chattel Mortgage on Building (Treated as Chattel) Made to Person Advancing Money—Priorities—Building Found to be Fixture—Short Forms of Leases Act, Schedule B. (10)—Preference—Assignments and Preferences Act—Intent—Present, Actual, Bona Fide Advance of Money—Fraudulent Transaction—Assignments and Preferences Act, sec. 5 (1).

Appeal by the defendant from the judgment of MASTEN, J., 12 O.W.N. 302.

The appeal was heard by MULOCK, C.J. Ex., CLUTE, RIDDELL, SUTHERLAND, JJ., and FERGUSON, J.A.

G. H. Kilmer, K.C., for the appellant.

G. S. Gibbons, for the plaintiffs, respondents.